

'MIXED' MARRIAGES AND THE CANONICAL TRADITION OF THE ORTHODOX CHURCH

The phenomenon of an ever-increasing number of 'mixed' marriages between Orthodox and other Christians poses a particularly serious problem to us today. On the one hand, a homogeneous marriage is correctly seen as the ideal relationship facilitating mutual growth of the spouses in Christ. On the other hand, existentially seen, current statistics in the United States reveal fewer marital breakdowns in heterogeneous marriages. This does not mean that the Orthodox Church should now promote 'mixed' marriages. Rather it points to an inadequacy in impressing upon those who enter into a homogeneous marriage the significance of their commitment.

As Orthodox we must first ask ourselves the following question: what makes a marriage truly Christian? The only response possible is that transformation of one's life in the reality of the kingdom, within the bonds of matrimony, presupposes the sharing of this reality with one committed to the same faith. This is the painful fact of our witness to such proposals as 'mixed' marriages. We might ask further: is it possible to share and become 'one body' in Christ if commitment to the same faith is not present? The fullest expression of such unity is participation in the mystery of the Eucharist. Through this act the two people united in marriage share and taste of God's Kingdom. The mystery of the Eucharist is the ultimate expression of our union with Christ. It is what makes the two people united in marriage members of the Body of Christ. It is what gives to marriage its specifically Christian character. In other words, it is in the Eucharist that marriage finds its fulfillment.

It is because of the **central place of the Eucharist** in the life of the faithful that a 'mixed' marriage immediately creates a problem. This is due to the fact that participation in the sacrament is exclusive, in the sense that non-Orthodox are not and can not be admitted to communion. The reason is apparent,

when one considers that participation in the Eucharist signifies oneness of faith. In the early Church when marriages were normally blessed during the course of the Eucharist, marriage under these circumstances between an Orthodox and a non-Orthodox Christian was unheard of. It was not until the marriage ceremony was removed from the central act of worship—the Eucharist—that the term ‘mixed’ marriage acquired meaning.¹

This brings us to a basic question regarding the real possibility of marriage between Orthodox and other Christians. Are such marriages possible, and if so, under what conditions? Unity of faith has always been a precondition to any marriage which takes place in the Orthodox Church. How, then, does one explain the phenomenon of an ever-increasing number of ‘mixed’ marriages between Orthodox and non-Orthodox Christians? How should the Orthodox Church respond to this reality?

The Canonical Tradition Regarding ‘Mixed’ Marriages

Canons regulating the marriage of an Orthodox to a non-Orthodox Christian are 10 and 31 of Laodicea, 21 of Carthage, 14 of Chalcedon, and the normative 72nd canon of the Sixth Ecumenical Council (Quinisext). All of these canons forbid ‘mixed’ marriages. Canon 72 of the Sixth Ecumenical Council is unequivocal in its prohibition of marriage between an Orthodox and a non-Orthodox Christian. Accordingly “An orthodox man is not permitted to marry an heretical woman, nor an orthodox woman to be joined to an heretical man.”²

Not only did the above canon prohibit a ‘mixed’ marriage, but it also insisted upon its dissolution in the event such a marriage had nonetheless taken place. Violators of this ordinance were susceptible to excommunication. The only exception recognized by the canon was that of a pre-existing mar-

1. John Meyendorff, *Marriage: An Orthodox Perspective* (Crestwood, New York, 1970), p. 39.

2. Henry R. Percival, ed., *The Seven Ecumenical Councils, Nicene and Post Nicene Fathers*, Second Series (Grand Rapids, 1956), 14, 397.

riage, where either of the spouses had subsequently espoused the Orthodox faith. This was in keeping with the teaching of St. Paul in 1 Cor. 7:12-14.

It remains now to consider whether the exact application (*kat' akriveian*) of this canon pertains only to those non-Orthodox Christians subscribing to heresies existing at the time of the Sixth Ecumenical Council, or beyond as well. Elsewhere, in canon 95 of this same council, distinctions were made in order to determine how each former heretic was to be received into the Orthodox Church. This is not the case, however, with the canon under examination. Furthermore, there is nothing in its wording that reveals a disposition to limit the heresies only to those existing at the time of the Sixth Ecumenical Council. On the contrary, both the general tone of the canon as well as its clarification of the reason for the prohibition suggest quite the opposite. The reason cited by the canon is that "it is not fitting to mingle together what should not be mingled, nor is it right that the sheep be joined with the wolf, nor the lot of sinners with the portion of Christ."³ It is obvious, therefore, that since the reason for the prohibition is the religious homogeneity of the family, as well as the protection of the 'sheep' from the 'wolves' and 'lot of sinners,' there can be no doubt as to the intention of the canon to include all heresies, at all times.⁴

The extreme difficulty, if not impossibility, of imposing so rigid a practice later led many Orthodox canonists to distinguish between heretics and schismatics in their attempt to justify the many 'mixed' marriages which had actually taken place since the adoption of the above canon. According to their interpretation, schismatics would not be included in the general prohibition of canon 72 of Quinisext.

In conjunction with the distinction between heretics and schismatics in determining the permissibility of marriage between Orthodox and non-Orthodox Christians, it is interesting to note the following discrepancy. In enumerating those with whom the sons of clerics may not be joined in

3. Ibid.

4. Hieronymos Kotsonis, *He kanonike apopsis peri tes epikoinonias meta ton heterodokson* (*Intercommunio*) (Athens, 1957), p. 224.

[REDACTED]

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its rights infringed upon, the Greek state eventually promulgated legislation permitting 'mixed' marriages. Today this issue has been resolved by Article 1367 of the Greek Civil Code, which recognizes the validity of 'mixed' marriages only when blessed by an Orthodox priest.¹²

In Russia 'mixed' marriages were permitted by an edict of Peter the Great dating from the year 1719. The granting of permission, however, was again dependent upon the written promise that children born of these marriages would be baptized and instructed in the Orthodox faith.

Although tendencies towards the exercise of leniency were evident quite early, it was not until the end of the eighteenth century that the first visible signs of the Church's changing attitude appeared.¹³ In the form of decrees issued by an ecclesiastical authority, 'mixed' marriages were permitted through the exercise of 'economy.' Each decree was issued in isolation, so as not to establish precedent. Characteristic of the reservation with which the first decrees were issued was the decision of the Holy Synod of Constantinople from the year 1878. It stated that the Church did not approve of 'mixed' marriages, but condescended to their taking place 'quietly' in order to prevent unfortunate consequences from occurring.¹⁴ One year later, the word 'quietly' was dropped from the text, and it was affirmed that such marriages would be permitted providing they were blessed by a canonical Orthodox priest.

Another significant step in the progressively more lenient attitude of the Church of Constantinople towards 'mixed' marriages was taken at the end of the last century. It constituted the transfer of the prerogative to exercise 'economy' in 'mixed' marriages from the Holy Synod to the local bishop. According to related decisions, ideally the non-Orthodox partner should be urged to espouse the Orthodox faith; otherwise, he or she must sign a written statement that children born of the marriage would be baptized into the Orthodox faith.¹⁵

12. Kotsonis, p. 233.

13. For their enumeration, see Kotsonis, pp. 229-33.

14. Michael Theotokas, *Nomologia tou Oikoumenikou Patriarcheiou* (Constantinople, 1897), p. 358.

15. Ibid.

create legislation binding upon the entire Orthodox Church. Providing an Ecumenical Council were convened, such authority, I dare say, would be exercised only regarding issues of universal concern. Issues of only local concern could continue to be met by the means already available to each local Orthodox Church.

In anticipation of the next Great Council of all the Orthodox Churches, which will undoubtedly address itself to many of the issues raised in this paper, I respectfully call attention to the urgency for guidance and leadership on the part of the local Churches. As in the past, it will be up to them to offer interim solutions to the burning issues which beset us. It was urgency in the past which prompted first the Church of Constantinople, and then various other autocephalous Churches, to show progressive leniency with regard to 'mixed' marriages between Orthodox and non-Orthodox Christians. It is my firm belief that our present dilemma demands similar action on the part of the Church with regard to related issues. This dilemma is accentuated particularly in the Western world where Orthodoxy constitutes a small minority within a vast pluralistic society.

Questions of Practical Concern

It will become apparent to the reader that the 'related issues' mentioned above refer to several questions of practical concern to Orthodox and Roman Catholics. Due to the fact that some of these questions have for the most part been competently answered,¹⁷ I shall confine myself to those points which are in need of further elucidation.

1. Regarding the marriage of an Orthodox and a Roman Catholic in the Roman Catholic Church, the question is one which has been raised before.¹⁸ As has been correctly recognized, the question cannot be divorced from its social and ethical dimensions. In today's world of rapid expansion and

17. See Victor J. Pospishil, *The Marriages of Eastern Non-Catholics Entered Outside their Church—A Problem for Catholics*, repr. from *Logos* (Yorkton, Saskatchewan, 1975).

18. See Hamilcar S. Alivizatos, "Peri mikton gamon," *Ekklesiastikos Faros* 31 (1932), 437-38. Cf. Kotsonis, pp. 206-11.

instant communications, the hindrance of 'mixed' marriages is utopian. This ought not to be understood as an endorsement of 'mixed' marriages, but rather as an objective observation of present-day realities.

These realities were highlighted recently in an article by Victor J. Pospishil.¹⁹ They include the fact that: a) in the United States and Canada, where Orthodox are greatly outnumbered, they frequently enter into marriage with Protestants and Roman Catholics before Protestant or Roman Catholic clergy, or before a civil magistrate; b) in Communist countries in Europe, where religious marriages are frowned upon, many Orthodox Christians are married before a civil magistrate; c) in some Balkan countries, where there is a great shortage of priests, many Orthodox settle for a civil marriage ceremony; and d) in those European countries in which great numbers of workers from Eastern Europe are employed, many Orthodox from among those workers conform to the civil marriage form practiced there.

There is no doubt that these facts testify convincingly enough to the need for the Orthodox to reassess their traditional view towards 'mixed' marriages. Keeping in mind the immediate purpose of this study, I limit my remarks to those marriages involving Orthodox and Roman Catholics.

2. Marriages between Orthodox and Roman Catholics before an Orthodox Priest.

Ideally, such marriages ought to be avoided whenever possible. If, according to what was said earlier, man and woman are to be transformed in the reality of the kingdom, they must be able to share this reality through the same faith. This is the painful fact of our witness to such marriages.

Father John Meyendorff has proposed that many of the problems relating to 'mixed' marriages could be clarified for both Orthodox and non-Orthodox by restoring the marriage ceremony to the Divine Liturgy.²⁰ As the ultimate expression of unity, the Eucharist would be reserved only for marriages between Orthodox. All other marriages would then take place

19. Pospishil, *Marriages*, p.1.

20. Meyendorff, *Marriages*, pp. 41-42. See also A.N. Smirensky, "The Evolution of the Present Rite of Matrimony and Parallel Canonical Developments," *St. Vladimir's Seminary Quarterly* 8 (1964), 46.

in an extra-eucharistic ceremony. This would hopefully serve to encourage the sincere desire of the Orthodox spouse for complete fulfillment through mutual participation in the Eucharist.

3. Marriages between Orthodox and Roman Catholics before a Roman Catholic priest.

Any marriage consciously blessed outside of the Orthodox Church is presently equated to a denial by the Orthodox partner of the Orthodox faith. On these grounds, marriages such as those in question ought not to be tolerated. Should such a marriage nevertheless take place, the Orthodox partner desirous of reconciling him or herself with his or her Church ought to be received into communion only after an act of penance, but remarriage ought not to be required. Marriages between non-Orthodox are not repeated when one of the partners subsequently enters the Orthodox Church. Marriages between an Orthodox and a non-Orthodox performed outside the Orthodox Church ought not to be treated differently when the Orthodox partner has repented.

Furthermore, in view of the incontestable facts cited earlier, the Orthodox Church cannot afford to ignore the realities of the situation in certain parts of the world today. This would be the equivalent of indifference to its pastoral responsibilities. Its understandable position of austerity in the past, as well as its inconsistency in later practice, must be replaced by a responsible position.²¹ Such a position, I believe, was taken by the eminent canonist Hamilcar Alivizatos.²²

Accordingly, an answer to the problem regarding marriages between Orthodox and Roman Catholic partners should be sought in Orthodox sacramental theology. The Orthodox Church recognizes marriage as one of its sacraments. It also recognizes in theory and practice sacraments of some non-Orthodox Churches under certain conditions. It stands to reason, then, that the sacrament of marriage performed by these same Churches should be recognized under the following conditions:

a) the teaching of these Churches regarding the sacraments

21. See Demetrios J. Constantelos, *Marriage, Sexuality and Celibacy: A Greek Orthodox Perspective* (Minneapolis, 1975), p. 59.

22. Alivizatos, "Gamón," pp. 437-38.

must coincide with that of the Orthodox Church, and b) the sacrament must be performed by a validly ordained priest, whose priestly status rests upon the same understanding of priesthood as sacrament within the context of apostolic succession. Because of the Orthodox understanding that only the priest or bishop can minister the sacrament of marriage, recent Vatican II decisions concerning the function of deacons in this regard would be unacceptable.

Sacraments fulfilling these basic requirements are from a canonical point of view efficacious and should be recognized as valid. Our Church does not have difficulty recognizing by 'economy' the validity of Baptism, which is the fundamental sacrament, performed in the Roman Catholic Church. I do not see why, therefore, the same principle could not be applied to marriage.

4. One result of the Orthodox teaching concerning the priest as minister of the sacrament of marriage is that marriages lacking the blessing of a priest are declared null and void. This would undoubtedly include marriages that are performed in the Roman Catholic Church *without* a priest or bishop. Similarly null and void are those marriage performed despite the presence of absolute impediments. These latter include: absence of free consent; pre-existing marriage; a third marriage; ordination, and similar situations. The competent ecclesiastical authority (local hierarchy) would upon request declare marriages performed with an absolute impediment invalid. Marriages fulfilling conditions for divorce (adultery, apostasy, etc.) would continue to be treated as before: local tribunals would investigate the canonical causes of the divorce, which they would either recognize as existing or not. As to the recognition of annulment decisions handed down by a Roman Catholic Church Tribunal, I do not believe any local Orthodox Church would acquiesce to such an arrangement without reviewing the grounds for the annulment. This is in part due to the divergent views of our Churches as to what in fact constitutes an annulment.

In this study I have attempted to respond to some specific questions posed by Roman Catholics. I have also attempted to raise some of the problems witnessed daily in our Churches. The inability to offer definitive solutions stems partially from

the liberty afforded each independent Orthodox Church to act as the need arises locally. This reality increases our need and desire for the long-awaited next Pan-Orthodox Council. It is our sincere hope that a continual dialogue will until then be implemented and expanded to deal with marriage and similarly sensitive problems. These issues demand a serious, balanced, and united stand. In response to this call, I offer the above as a minimal and sincere attempt.

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